Supreme Court, U.S.
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No. 98-1797

In The

Supreme Court of the United States

MANUEL A. IGLESIAS,

Petitioner,

v.

MUTUAL LIFE INSURANCE COMPANY OF NEW YORK,

Respondent.

On Petition A For Writ Of Certiorari To The United States Court Of Appeals For The First Circuit

OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED BY PETITION

1. Whether Rule 56 of the Federal Rules of Civil Procedure require the reversal of the District Court's granting summary judgment on statute of limitations grounds, given the existence of material facts in genuine controversy concerning accrual of the employment discrimination actions, in light of standards set forth in *Anderson v. Liberty Lobby*, 477 U.S. 424, 106 S. Ct. 2505 (1986)?

   A. What consideration, weight and effect is to be accorded to the jury determination and verdict of February 7, 1997 in favor of petitioner's assertion that he did not agree to resign but was dismissed?

2. Whether the Court of Appeal's decision is unsupported by Puerto Rico law and jurisprudence concerning employment discrimination cases which establish that a Plaintiff's claim cannot accrue until he is put on notice of a date certain on which the adverse employment action will take a place?

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OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

Respondent, The Mutual Life Insurance Company of New York, hereinafter Mutual or Mutual of New York, respectfully requests the United States Supreme Court, for the reasons set forth herein, to deny Iglesias' petition for writ of Certiorari to review the judgment and opinion of the United States Court of Appeals for the First Circuit in this case.

I. OPINIONS BELOW

The Respondent does not contest petitioner's characterization of the opinions below.

II. STATEMENT OF JURISDICTION

Respondent does not contest Petitioner's statement of jurisdiction.

III. CONSTITUTIONAL AND STATUTORY PROVISIONS

Respondent does not contest Petitioner's statement regarding the applicable statutory provisions although Petitioner's interpretation of the law is excepted.

IV. RESPONDENT'S STATEMENT OF THE CASE

This is the case of a former insurance salesman who was contracted as sales manager of Mutual of New York in 1976 in Puerto Rico and thereafter was promoted to the position of Agency Manager in 1981. In 1989, Mr. Iglesias

was removed from his position as Agency Manager on the basis of a belief by Mutual of New York that an agreement had been reached with Mr. Iglesias in order for him to proceed with his early retirement. The notice of the removal from the position was issued by Mutual of New York at the latest by February 9, 1989, notice that Iglesias has always acknowledged he received soon thereafter, while he was enjoying the benefits of a disability status from January 1989 until the month of May 1990. On May 15, 1990, upon termination of his company disability benefits he asked for the position of Agency Manager held before, upon which he was reminded of Mutual's February 1989 decision and his early retirement. Thereafter, in August 1990 Mr. Iglesias filed a complaint at the Anti-Discrimination Unit of the Department of Labor and Human Resources of the Commonwealth of Puerto Rico alleging that he was subject to a wrongful termination and discrimination on the basis of his age and national origin not only due to the termination, but also his employment conditions.

Upon exhaustion of the administrative remedies, Mr. Iglesias filed the complaint in the case at bar on April 17, 1991, thereafter amended on September 4, 1991, in the United States District Court for the District of Puerto Rico. The gist of Mr. Iglesias' allegations relates back to a decision undertaken by Mutual of New York in 1976, (Iglesias alleges it was in 1981), to remove the disability insurance products from the Puerto Rico market. Even though that decision was made, the Puerto Rico office remained open, Iglesias was allowed to sell disability insurance products from other insurers, and he continued working as agency manager of the company without any

interruptions until 1988. Iglesias alleges that Mutual of New York's decision was based on a discriminatory animus against Puerto Rico and Puerto Ricans, and that the discriminatory decision had the adverse impact of reducing the sales of the Puerto Rico agency undermining the full potential of Iglesias and his staff to promote a successful sale operation in Puerto Rico, sales record that was used to place him in probation and ultimately to compel his removal as agency manager and his early retirement. Mutual of New York denies such charges.

The employment discrimination claims under Title VII of the Civil Rights Act have a 300 day statute of limitations and those under the Puerto Rico laws a one year statute of limitations. See 29 U.S.C. § 626(d)(2), 42 U.S.C. 2000e(5)(e)(1) and regarding Puerto Rico's statute of limitations, see Article 1868 of Puerto Rico's Civil Code, 31 L.P.R.A. § 5298 and *Olmo v. Young & Rubicam*, 110 D.P.R. 740 at 745 (1981) and Act 100 of June 30, 1959, 29 L.P.R.A. § 146. The claims made by Iglesias had two elements: (a) that of the discriminatory working conditions allegedly imposed by Mutual of New York by denying Mr. Iglesias the sale in Puerto Rico of Disability Insurance for alleged discriminatory reasons, decision undertaken as far back as in 1981 according to Iglesias' allegations; and (b) that of the discriminatory act of terminating him or forcing upon him the early retirement option. All of the claims, those pertaining to the working conditions and those pertaining to the termination of his employment were dismissed as time barred. See Partial Judgment Dismissing Discrimination Claims of July 1, 1994 annexed to Certiorari Petition at 35a and order in the matter of Report and Recommendation of July 1, 1994

by Hon. Judge Raymond Acosta, annexed to Certiorari Petition at 36(a) through 49(a). The factual basis of the dismissal consists of Petitioner's own admissions as to when he became aware of the alleged discriminatory treatment and his termination.

Before the Court of Appeals and now before the Supreme Court of the United States, Iglesias argues the following: that the statute of limitations issue could not be disposed of summarily because there was a genuine controversy concerning the accrual of the action, that the Court of Appeals failed to consider the effect of the jury verdict which shed light over the controversy pertaining to the accrual of the action, and that the statute of limitations could only begin to run on May 17, 1990 when the Plaintiff supposedly was put on notice of the adverse employment action against him. As we will show in this brief, the analysis of the Petitioner is flawed both as a matter of fact and as a matter of law, and accordingly the Certiorari petition should be denied.

V. SUMMARY OF THE ARGUMENT AND REASONS FOR DENYING THE WRIT

1. The District Court and the Court of Appeals correctly interpreted and applied Rule 56 of the Federal Rules of Civil Procedure considering the lack of any material facts in controversy in light of Plaintiff's uncontroverted admissions.

2. The jury verdict is impertinent and immaterial to the outcome of the controversy.

3. The District Court and Court of Appeals decisions are consistent with Puerto Rico's law and jurisprudence concerning the accrual of causes of action and a

party's knowledge of the existence of the cause of action in order to be able to exercise it or not considering Plaintiff's admissions during the discovery and at trial.

VI. ARGUMENT

1. The District Court and the Court of Appeals correctly interpreted and applied Rule 56 of the Federal Rules of Civil Procedure considering the lack of any material facts in controversy in light of Plaintiff's uncontroverted admissions.

A. ***The standard of review of summary judgments on statute of limitations grounds in which material facts in controversy might appear:***

A timeliness defense may be ruled upon by way of summary judgment provided that the relevant facts are not in controversy. See *Jensen v. Frank*, 912 F.2d 517 (C.A. 1, 1990). As set forth before, the plaintiff is asserting two types of discrimination actions in the case at bar. One is based on the alleged discriminatory working conditions he was subject to and the other pertaining to the discriminatory termination of his employment by Mutual of New York. To scrutinize petitioner's factual and legal theories we must restate the objective facts over which there is no controversy in order to place the Certiorari Petition in the proper perspective.

1. The plaintiff was hired as sales manager of Mutual of New York in 1976. See pages 1a through 3a of this Opposition which correspond to stipulations reached by the parties at trial, pages 771 through 773 of Joint Appendix before Court of Appeals and pages 16 through 18 of Trial Transcript.

2. The plaintiff was promoted to the position of agency manager in 1981. See page 1a.

3. Mutual of New York removed the disability insurance product from the Puerto Rico market in 1981,[1] action that constitutes the first alleged discriminatory act undertaken by Mutual of New York against the Petitioner. See page 1a.

4. Even though Mutual of New York did not offer the disability insurance product at that time in Puerto Rico, the Plaintiff was allowed to sell disability insurance products from other companies. See page 1a.

5. Petitioner, acknowledged in his deposition that he had knowledge of the alleged discrimination in his working conditions regarding the sale of the disability insurance product, based on his national origin since the year 1981. At the deposition he stated and we quote in response to questions regarding that matter:

   "Yes with the exception of the discrimination, it did not hit me at that time, IT HIT ME BACK IN 1981 AND EVERY SINGLE YEAR AFTER THAT". (Emphasis added). See page 4(a) of Appendix to this Opposition to Petition for a Writ of Certiorari, which corresponds to page 77 of Joint Appendix before First Circuit Court of Appeals, and page 309 of Petitioner's Deposition taken on September 13, 1991, November 7, 1991 and February 27, 1995.

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[1] Mutual sustains that it was in 1976, but for purposes of the argument we refer to the year alleged by the Petitioner.

6. In the latter part of 1988, the Regional Vice-President of Mutual of New York who oversaw the work of Mr. Iglesias at that time, Mr. Robert Kramer, discussed with Mr. Iglesias the dissatisfaction of the company with his performance and the options pending for him: probation and ultimately termination if the performance did not improve or early retirement. See page 5a of Appendix to this Opposition which corresponds to May 15, 1990 letter of Petitioner to Mr. Robert Kramer, setting forth Iglesias version of the events and page 73 of Joint Appendix before First Circuit Court of Appeals.

7. Petitioner characterized such discussions as one in the latter part of 1988 in which Mr. Kramer told him "to retire or I would have to be terminated as Agency Manager". Id.

8. In December of 1988 Mr. Iglesias' applied for and was granted the disability insurance benefits of Mutual of New York as a result of certain back ailments he had. See page 6a of Appendix to this Opposition to Petition for a Writ of Certiorari, which corresponds to page 59 of Petitioner's Deposition and page 66 of Joint Appendix before Court of Appeals.

9. In that same month Mr. Kramer submitted to Mr. Iglesias the terms of his retirement through a letter dated December 28, 1988. See page 7(a) of this Opposition to Petition for a writ Certiorari (hereinafter Opposition) and pages 62 and 63 of Joint Appendix before First Circuit Court of Appeals, (hereinafter Joint Appendix).

10. Thereafter, on February 9, 1989, Mr. Iglesias was advised by Mr. Kramer of the fact that *he no longer was going to act as Agency Manager* of Mutual of New York and that upon termination of his disability he had to proceed with his early retirement, and perhaps continue with the company as a sales agent. See page 9(a) of this Opposition and page 68 of Joint Appendix. (Emphasis added).

11. Between February 9, 1989 and May 15, 1990 Mr. Iglesias did not respond to the February 9, 1989 letter of Mr. Robert Kramer, neither did he address his employment status with any officer of Mutual of New York. See pages 10a and 11a of this Opposition which corresponds to pages 95 and 96 of Petitioner's deposition and pages 75 and 76 of Joint Appendix before Court of Appeals.

12. As early as in 1981 Mr. Iglesias was aware of the fact that Mutual of New York was allegedly discriminating against him by removing the disability insurance product from Puerto Rico, and he did not undertake any administrative, judicial, or legal actions against Mutual of New York as a result of the decision until the filing of the action in the case at bar in August of 1990, before the Anti-Discrimination Unit of the Department of Labor of Puerto Rico, proceeding with the complaint on April 12, 1991, thereafter amended on September 4, 1991. See Amended Complaint pages 12a through 26a of this Opposition which correspond to pages 1 through 16 of the Joint Appendix.

13. Regardless of the response that Mutual of New York gave Mr. Iglesias on May 17, 1990 to Mr. Iglesias May 15, 1990 letter requesting reinstatement as Agency Manager, after February 9, 1989, Mr. Iglesias knew that he had been terminated as Agency Manager of Mutual of New York as acknowledged by him at trial and in a letter written by him to a prospective employer in January, 1990, in which he categorically accepts that he knew he was terminated as Agency Manager. See page 27a of this opposition which corresponds to letter of Mr. Robert Kramer dated May 17, 1990 which corresponds to page 74 of Joint Appendix.

14. Iglesias knew of the adverse actions undertaken by Mutual of New York against him upon receipt of the February 9, 1989 letter when at trial in response to questions by Hon. Judge Raymond Acosta at the end of his testimony he answered the following questions and we quote:

The Court: So you're saying these letters were in effect – you were being fired? Is that the way you interpreted these letters? That you were not retiring, that you were being fired?

Iglesias: In October of 88 he said to me, "Either you retire or I'll retire you". And that's in evidence, and this means he planning (SIC) on firing me, I don't know what to say.

The Court: So let's say he put it in writing on December 28, 1988 and February 9, 1989. And what did you do about it?

Iglesias: Nothing.

The Court: Why did you not do something about it?

Iglesias: I felt humiliated by what he was offering because he was firing me . . . See page 28a of the Appendix to this Opposition which correspond to page 214 of Trial Transcript and page 1105 of Joint Appendix (Emphasis added).

15. In the January, 1990 letter by Mr. Iglesias to a prospective employer, Iglesias states and we quote:

> "To bring you up to date and to confirm our telephone conversation, here are my plans for 1990. First, I should come off disability in February or March. At that time *I should be working as a Sales Manager for either* New England Life, Metropolitan Life, or Mutual Benefit Life During 1990. I shall recruit 7 or 8 agents on a career basis. . . . .". See pages 29a and 30a of the Appendix to this Opposition which correspond to Defendant's, Mutual of New York, Exhibit B at trial and pages 1503 and 1504 of Joint Appendix (Emphasis added).

16. Further on in the letter he states making reference to Mutual of New York's withdrawal of the disability insurance policies from Puerto Rico and we quote:

> Then in 1982 Mony withdrew its D.I. policies from my agency. (This was for reasons that I shall explain at a later date to you, *and also part of my legal action against Mony within the next two months*). (Emphasis added). See page 29a of this Opposition.

17. Soon after beginning to enjoy his disability benefits after January 1989, Mr. Iglesias also collected his liquidated vacation pay pending as of the date of his termination as Agency Manager. See pages 31a through 35a of this Opposition which corresponds to pages 1100 through 1104 of the Joint Appendix and pages 209 through 213 of the Trial Transcript.

18. On February 7, 1998 the Court decided to split the trial in two parts, the first part corresponding to determining whether the Plaintiff was fired or not and the second part whether his termination was wrongful or not. For the first part of the trial the jury had to decide whether the Plaintiff voluntarily retired as Agency Manager or whether he was dismissed or forced to retire. See page 36a of Opposition which corresponds to verdict form, page 1512 of Joint Appendix before the Court of Appeals.

Considering this set of uncontroverted facts and admissions made by the Petitioner, let us apply and interpret the law. Petitioner argues Citing *One National Bank v. Antonellis*, 80 F.3d 606, 608 (C.A. 1, 1996), that summary judgment is only appropriate when there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law reviewing the record in the light most favorable to the non movant indulging all reasonable inferences in that party's favor. Petitioner argues that the Court of Appeals did not apply the *Antonellis* standard by erroneously determining that as late as in February 1989 the Petitioner had been put on notice that he had been fired. Even though the Petitioner alleges that such fact, the date of the notice of the firing, was in dispute, he fails to set forth what is in dispute

considering the objective facts established at trial and those admitted by the Petitioner in order to compel the Court to deny summary judgment requiring a jury trial over that fact. No alternative fact is offered by the Petitioner to illustrate or create the conflict or genuine issue as to a material fact, other than relying on the Supreme Court's conclusion in *Luján v. National Wild Life Federation*, 497 U.S. 871, 888, 110 S. Ct. 3177, 3188, 111 L. Ed. 2d 695 (1990) that where the facts specifically averred by a party contradict facts specifically averred by the movant, the motion must be denied, applying such conclusion to the contradictory allegations made by the parties regarding Mutual of New York's assertion that Iglesias agreed to retire and Iglesias allegations that he did not agree to retire and was fired.

With all due respect to Petitioner's counsel, such conflicting views of the facts are immaterial not to mention insignificant for purposes of determining whether the claims were time barred or not on the basis of the objective facts admitted by Iglesias. One of the first critical flaws of Petitioner's theory is his reliance on the averments made by the parties. Rule 56 of the Federal Rules of Civil Procedure, as interpreted, require a party opposing a motion for summary judgment to go beyond relying on the parties averments or allegations. He or she must go forward controverting the material facts relied upon by the movant with documents, statements under oath, admissions, affidavits or other proof to substantiate the conflict. See *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986), *Pagano v. Frank*, 983 F.2d 343 (C.A. 1, 1993); and *Wynne v. Tufts University School of Medicine*, 976 F.2d 791 (C.A. 1, 1992). The alternative factual theories of the

parties or allegations are not enough. See *Lawrence v. Northrop*, 980 F.2d 66 (C.A. 1, 1992); and *Medina Muñoz v. Reynolds Tobacco Co.*, 896 F.2d 5 (C.A. 1, 1990). Furthermore, the Petitioner fails to face the fact that Mutual of New York's request for dismissal is based on three basic premises: (a) the alleged discriminatory treatment in the employment and the termination of the Plaintiff that took place; (b) the plaintiff was well aware of the alleged discriminatory treatment as far back as 1981 and the termination as far back as February 1989, and (c) the plaintiff did nothing about the alleged discriminatory treatment and termination for more than 300 days in the case of the federal claims and one year in the case of the state claims.

The fact that Mutual has alleged that it did not terminate the plaintiff, that it believed that there was an agreement with Iglesias to proceed with early retirement, fact that Iglesias has disputed, is irrelevant and immaterial, just as the jury verdict as we will discuss further below. What Mr. Robert Kramer had in his mind when he wrote the February 9, 1989 letter is irrelevant considering the fact that in his mind, whether by way of early retirement or not, Iglesias employment as agency manager *had ended* as late as February 9, 1989 and Iglesias, in his mind, was well aware of such termination as he eloquently admitted in the discovery and at trial.

The determination of the beginning of the accrual of the time in the case at bar at the District Court level was based on *uncontroverted* facts and *admissions* made by the Plaintiff, and uncontroverted acts undertaken by him that must leave no choice to a reasonable person to conclude that he had sufficient, clear and unequivocal notice of the decisions undertaken by Mutual of New York and the

exact date and time upon which he could file the corresponding legal actions. As uncontroverted facts and admissions, with regard to the dismissal of the discrimination claims as time barred, there are no material issues of fact in controversy that could impede summary disposition of the claims.

Regarding the alleged "discriminatory" removal of the disability product from the Puerto Rico market, we reiterate how Iglesias acknowledged in his deposition that he was aware of that "discrimination" as early as in 1981. See page 4a of this Opposition. With regard to his termination, in addition to the admissions set forth herein, Iglesias also admitted knowledge of Mutual's decision in his letter of May 15, 1990 where he makes reference to Mutual's intention to terminate him in 1988. See page 5a of this Opposition. Then there is Mr. Kramer's letter of December 28, 1988 and the one of February 9, 1989, both addressed to and received by Iglesias, in which he makes several statements to Mr. Iglesias regarding Mutual's unequivocal decision to end the relationship with him via retirement and we quote:

> " . . . you should file your early retirement papers *so that as soon as you come off disability YOU WILL GO STRAIGHT INTO early retirement.*"
>
> " . . . We will discuss your role as a Field Underwriter . . . when your medical problem is resolved." (That is insurance agent, not Agency Manager in the future).
>
> *" . . . you will no longer be authorized to sign-off or act as manager . . . until a new manager is appointed."* See pages 9a of this Opposition. (Emphasis added).

Finally, there is Iglesias' own January 1990 letter to a prospective employer or business associate, Mr. Lee Glenn in which he states:

> "to bring you up to date . . . here are my plans for 1990. First, I should come off disability in February or March. *At that time I should be working as Sales Manager for either New England Life, Metropolitan Life or Mutual Benefit Life. During 1990 I shall recruit 7 or 8 agents on a career basis . . . "* (Emphasis added). See page 29a of this Opposition.

These statements evidently show clear, undisputed, and unequivocally that Iglesias knew that his relationship with Mutual of New York was over, knowledge that at the latest should have caught Mr. Iglesias' mind, as of February 1989, in addition to the fact that between February of 1989 and May 1990 Iglesias did not discuss or address this matter with any Mutual of New York officials. Furthermore, in that same letter Iglesias adds:

> "Then in 1982 MONY withdrew its DI policies from my agency. (This was for reasons (SIC) that I shall explain at a later date to you . . . *and also part of my legal action against Mutual within the next two months)".* (Emphasis added).

This record shows that Mr. Iglesias knew about the grievances he had against Mutual as late as in February of 1989, fact that is undisputed and that clearly shows that there are no issues of material fact over this matter, allowing a judge through Summary Judgment to reasonably conclude that these claims are time barred.

If that record is still doubtful, we must then focus on Iglesias' own testimony at trial. In response to questions

from Honorable Judge Raymond Acosta, Iglesias acknowledged the taking of the liquidation of his vacation pay, (a detail focused on by the First Circuit Court of Appeals while determining if the statute of limitations had accrued or not in *Rivera Muriente v. Agosto Alicea*, 959 F.2d 349 (C.A. 1, 1992)), and his failure, after February 9, 1989 to respond to Robert Kramer's notices of termination via early retirement of December 28, 1988, which included the liquidation of the vacation pay agreement.

Finally, if what Iglesias attempts to do with his May 15, 1990 letter is to try to reinstate his cause of action through a request of reconsideration or a new "discriminatory" event, such efforts do not toll the limitation of actions as set forth by the Supreme Court of the United States in *Delaware State College v. Ricks*, 449 U.S. 250, 101 S. Ct. 498; 66 L. Ed. 2d 431 (1980).

B. The jury verdict is impertinent and immaterial to the outcome of the controversy.

We take exception to Petitioner's insistence on the importance of the jury verdict and the meaning he is trying to derive from the verdict. The determination of the beginning of the accrual of the time in the case at bar at the District Court level was based on *uncontroverted* facts and *admissions* made by the Plaintiff, and uncontroverted acts undertaken by him that must leave no choice to a reasonable person to conclude that he had sufficient, clear and unequivocal notice of the decisions undertaken by Mutual of New York and the exact date and time upon which he could file the corresponding legal actions. As uncontroverted facts and admissions,

with regard to the dismissal of the discrimination claims as time barred, there are no material issues of fact in controversy that could impede summary disposition of the claims.

Regarding the alleged "discriminatory" removal of the disability product from the Puerto Rico market, we reiterate how Iglesias acknowledge in his deposition that he was aware of that "discrimination" as early as in 1981. With regard to his termination, Iglesias admitted knowledge of Mutual's decision in his letter to Robert Kramer dated May 15, 1990. As set forth before, see also Mr. Kramer's letters of December 28, 1988 and the one of February 9, 1989, both addressed to and received by Iglesias, in which he makes several statements to Mr. Iglesias regarding Mutual's unequivocal decision to end the relationship with him via retirement. Finally, we also reiterate again Iglesias' own February 1990 letter to a prospective employer or business associate, Mr. Lee Glenn referred to before.

These statements evidently show clear, undisputed, and unequivocally that Iglesias knew that his relationship with Mutual of New York was over, knowledge that at the latest should have caught Mr. Iglesias mind, as of February 1989, in addition to the fact that between February of 1989 and May 1990 Iglesias did not discuss or address this matter with any Mutual of New York officials. Considering this record, the allegation that the jury determination and verdict of February 7, 1997 in favor of the plaintiff asserting that he did not voluntarily resign, but that he was constructively dismissed, nullified the Court's earlier determination concerning the accrual of his employment discrimination actions is unwarranted

and farfetched, not to mention completely devoid of any factual or legal reality. The verdict form used by the jury during the deliberations sets the scope of what was actually adjudicated by the trier of fact. See page 36a of this Opposition which corresponds to page 1512 of Joint Appendix. The questions before the jury were the following: Whether the plaintiff voluntarily retired as Agency Manager of Mutual of New York in Puerto Rico or whether the defendant dismissed or otherwise caused plaintiff's involuntary retirement from his employment as Agency Manager of Mutual of New York in Puerto Rico.

Nowhere in the verdict form is any reference made to Mutual's decision and action to remove the DI insurance product from Puerto Rico. Furthermore, nowhere is there any reference made in the form regarding the date of the termination of the plaintiff. Thus, the fact that as late as 1981 the plaintiff knew that Mutual had pulled the DI product from Puerto Rico, and that as early as in 1981 he was aware of the alleged discrimination remains undisputed, just as that as of February 1989 Mutual had made up its mind regarding the fact that Iglesias was no longer going to work as Agency Manager of Mutual of New York in Puerto Rico, as Iglesias admitted it in the trial. Thus, the argument made that the jury verdict makes ineffective the Court's decision to dismiss the discrimination claims as time-barred should be denied. Furthermore, the fact that the jury agreed with Iglesias theory of the case regarding the allegation that he was terminated, is immaterial considering Iglesias' own admissions and the established objective facts during the discovery and at trial. Wherefore, the petition for Certiorari should be denied.

C. The lower Courts' decisions are consistent with Puerto Rico's law and jurisprudence concerning the accrual of causes of action.

In his appeal Iglesias argues that the District Court erred when the discrimination claims were dismissed as time-barred, because the Court's decision was based on material facts that were in controversy regarding Iglesias' effective date of termination or notice of termination and because the Court also disregarded Puerto Rico's case law in that respect. Nevertheless, the following facts were unequivocally admitted by Iglesias in his depositions and at trial:

(a) That Mutual, as early as in 1981 had removed the DI product from Puerto Rico and that as of 1981 Iglesias believed such decision was discriminatory;

(b) that he received notice of the fact that he was no longer going to be Mutual's Agency Manager in Puerto Rico by February 1989; and

(c) that by February of 1990, three months before his disability benefits ended, he was already seeking employment with other insurance companies and was already planning to sue Mutual of New York.

Statutes of limitations have two basic objectives. The first one is to impose on prospective claimants the obligation of exercising their legal rights within a reasonable period of time and while the objects of controversy (i.e., witnesses, documents, and evidence) are still available in order to allow the finder of fact to adjudicate the claims with justice and efficiency. In *Agulló v. ASERCO*, 104 D.P.R. 244 (1975) the Supreme Court of Puerto Rico set

forth this objective by making reference to Spain's Civil Law scholar Diez Picazo who wrote:

> The statutory limitation of actions protects, above all . . . a very concrete particular interest of an individual not to be exposed to old claims, of which memory has been lost, because silence has created an objective and reasonable confidence that the right or power would not be exercised. Diez Picazo, *La Prescripción en el Código Civil*, at 56 (1964) as cited in *Agulló*, at 248. (Translation supplied).

Second, these statutes attempt to provide a certain stability in the relationships between the parties by establishing specific periods of time for the development of legal relations that will not be subject to attack at the whim of the parties. As set forth by the Supreme Court of Puerto Rico in *Agulló*:

> Reasons of social need and utility have made necessary and convenient the limitation of actions. As Castán points out, the limitation of actions guarantees the stability of the property and the certainty of the other rights. This same author adds that "the economy and the juridical life would suffer a heavy loss if the facts represented by the exercise or non exercise of a right, would not become, with the passing of time, an incontestable legal situation". Castán, *Derecho Civil Español Común y Foral*, 834 (10th ed. 1963). (Translation supplied).

The statute of limitations for discrimination claims in Puerto Rico is the one year period set forth in Article 1868 of Puerto Rico's Civil Code. 31 L.P.R.A. § 5298. See *Olmo v. Young & Rubicam*, 110 D.P.R. 740, at 745 (1981). The Civil Code, with regard to the exercise of causes of action

also sets forth that actions begin to run from the moment in which the causes of action could have been exercised.

With regard to his capacity to exercise his causes of action, Iglesias never alleged or declared that he was mentally incompetent or legally disabled to exercise his claims. Quite to the contrary, the record shows a man who was well aware of the alleged violations to his rights since 1981. He worked throughout the period from 1981 until 1988 as Agency Manager, and his disability, the one suffered in 1988, was a physical disability, not a mental one. Furthermore, during the disability period, he felt good enough to write a letter in January of 1990 to Mr. Lee Glenn, where he eloquently expresses his plans to sue Mutual of New York and to pursue employment opportunities somewhere else. Evidently, he could have exercised his discrimination claims based on Mutual's removal of the DI Product from Puerto Rico as early as in 1981. He did nothing about it until 1990 when he filed his administrative claim at the Anti-Discrimination Unit of the Department of Labor of Puerto Rico, more than 9 years after he was aware of the alleged violation of his rights, and more than 15 months after he stopped working as Agency Manager while receiving his disability benefits until May of 1990 when the benefits ceased.

The case law relied on by the Plaintiff to support his arguments either reiterates the statute of limitations doctrine relied on by the District Court to declare the claims time-barred or is inapplicable or being misapplied to the facts in the case at bar. The first case cited is *Olmo v. Young & Rubicam*, supra, where the Supreme Court of Puerto Rico expressly stated that the cause of action accrues from the moment the aggrieved party learns of

the discriminatory action or the decision to take such an act. It is evident from the Plaintiff's own admissions that as early as in 1981 he knew of Mutual's alleged discriminatory decision with regard to the disability insurance product in Puerto Rico. He did nothing about it for more than nine years. With regard to his termination as Mutual of New York's Agency Manager, he knew about it, at the latest, by the month of February of 1989. Evidently he knew it considering the fact that by March of 1990 he had plans to initiate a legal action against Mutual, conveniently, by the time his disability benefits were going to end. If he was going to receive those benefits for one, two, three, or more years, was he going to wait until then to file the action? Evidently, while there was a flow of income from Mutual to Mr. Iglesias, he felt no need to initiate a legal action. Soon after the flow was shut, he found it convenient to file his legal claim. Statutes of limitations exist and are applied, in part, to prohibit such "conveniences".

Iglesias argues that pursuant to *Nazario v. Vélez*, 97 D.P.R. 458, at 460-461 (1969) the statutes of limitations in employment claims should be "liberally construed". Such mandate does not entail a mandate to disregard the basic element of the limitation: the claimant has one year from the moment he learns of the discriminatory decision. In that respect his admissions are evident, clearly demonstrating that he did nothing about his claims for more than a year. Accordingly, they are time-barred. The unequivocal notice of the alleged discriminatory action as set forth in *Chardón v. Fernández*, 454 U.S. 6, 29 (1981), was evident in Iglesias' mind, when he admits that he knew of the alleged discrimination by Mutual as early as in 1981.

With such a record, Iglesias cannot argue that he lacked knowledge of Mutual's decision not to keep him any longer as Agency Manager, just as he cannot argue a lack of knowledge regarding Mutual's decision not to sell Disability Insurance in Puerto Rico. Likewise, he cannot credibly argue that it was not until after May of 1990, just after his disability benefits ended, that the point at which he could pursue legal action arose, as some how argued by Iglesias when he cites *Miller v. Beneficial Management Corporation*, 927 F.2d 834, 842 (C.A. 3, 1992). Evidently, he could have exercised his action regarding the sale of DI insurance in Puerto Rico after 1981, and he chose not to.

Furthermore, he could have exercised his alleged discriminatory termination cause of action soon after February of 1989, and for more than 15 months he chose not to. No evidence of mental disability or diminished capacity by Iglesias was presented before the District Court. Thus, he was capable of exercising his action, action that may have been "inconvenient" while he was working as Agency Manager or while Iglesias was receiving his disability benefits, but was certainly viable, considering the viability criteria set forth by the Supreme Court of Puerto Rico in *Culebra Enterprises v. E.L.A.*, 127 D.P.R. 943 (1991). With regard to the reliance of Iglesias on certain Puerto Rico Supreme Court cases regarding knowledge of the source of the harm,[2] Iglesias not only knew about the

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[2] *Alicea v. Córdova*, 117 D.P.R. 676 (1986), *Rivera Encarnación v. E.L.A.*, 113 D.P.R. 383 (1982), and *Ojeda Ojeda v. Vocero*, 94 J.T.S. 11, Puerto Rico Supreme Court Opinion of October 26, 1994, 94 CDT 30.

alleged harm, but also about who caused it – Mutual of New York.

Finally, we reject the plaintiff's reliance on the *Vélez-Rodríguez v. Pueblo International* Supreme Court of Puerto Rico decision (___ D.P.R. ___, 94 J.T.S. 37 (94 CDT 35) (P.R. Supreme Court Opinion of March 18, 1994)), to stretch the period of the statute of limitations. In *Vélez-Rodríguez* the Supreme Court of Puerto Rico interpreted the periods of time set forth by a specific statute in Puerto Rico that grants a cause of action to employees who are terminated while they are enjoying the benefits of the Workmen's Compensation and State Insurance Fund Act, Act 45 of April 18, 1935 as amended. (11 L.P.R.A. §§ 1, et seq.). A copy of relevant sections of the act is attached for ready reference of the Court, see pages 1b et seq. of this opposition. That statute imposes on employers the obligation to keep open the position of any employee who suffers an accident in employment as a result of which he becomes unable to work, while the worker receives the medical benefits offered by the State Insurance Fund. That obligation lasts for one year from the date the disabling accident takes place and within the year, once the Fund grants the employee permission to go back to work, he or she must report to work within a specific period of days. See Article 5a of Act 45, as amended, (11 L.P.R.A § 7) where reference is made to the 15 day period granted to the employee to return to work. As long as the employee is not granted permission to work the employee cannot report to work and the employer is under no obligation to employ him. If within the year permission is granted, and the employee within the period set forth by law shows up to work, and the employer refuses to reinstate him, then

the statute is violated and the cause of action arises. From that point on the statute of limitations for wrongful termination under that Act begins to run. Obviously, pursuant to *Vélez-Rodríguez*, when the employee is granted permission to return to work, obligation to return to work that the employee has to undertake within a specific period of time, if he returns and gets the door shut by the employer, from the moment the obligation to reinstate him is violated, the time to exercise the cause of actions begins to run. If the employee, due to his disability is not allowed to go to work within the year, once the year lapses the employer may then hire someone else.

In the case at bar, Iglesias was not receiving disability benefits from the State Insurance Fund. He was receiving them from Mutual of New York as part of a private disability insurance plan. Furthermore, contrary to the *Vélez-Rodríguez* case, where the Court confronted a problem with the date in which the employee had unequivocal notice of termination, in the case at bar, Iglesias had that notice more than a year before that, and under the disability program of Mutual, Mutual had no obligation to keep an employee's position open while the employee received the benefits of the plan. Accordingly, the use of the *Vélez-Rodríguez* case to allow Iglesias to stretch his statute of limitations period is untenable and unsupported by the facts and the case law. Moreover, if we were to stretch *Vélez-Rodríguez* to the limits of Iglesias' logic, considering the fact that Iglesias disability lasted 15 months, after the year from the date the disability started, Mutual of New York had no obligation to retain him.

Iglesias argues that he did not have a "readily identifiable date" to provide him with a warning as to when he

could exercise his rights. However, the uncontroverted record and his own admissions show otherwise. In order for a statute of limitations to begin to run, a date has to be pinpointed. That date must be the date on which the adverse action against the claimant took place or, in the alternative, the date on which the individual *received unequivocal notice of the employer's decision to undertake adverse action against him.* In this case, we have set forth three possible dates on which the notice required by law may have occurred, each of them substantiated by the *Plaintiff's own admissions*, and each of them resulting in a time bar.

The first significant admission made by the Plaintiff was during his deposition of November 7, 1991, in which he acknowledged that he was aware of the alleged discriminatory animus of Mutual as early as in the year 1981[3]. Thus, as early as 1981, he could have initiated a cause of action against Mutual for discrimination. With regard to Mutual's decision to allegedly terminate him he could have filed suit as early as in February of 1989.

What triggered this case was the termination of the relationship between the Plaintiff and Mutual, an outcome of which the Plaintiff has been aware of, for purposes of Puerto Rico's Act 100 of June 30, 1959, 29 L.P.R.A. § 146, and Title VII actions as early as February, 1989, pursuant to his own admissions. And in fact, such awareness could be traced as far back as the latter part of

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[3] We must clarify that even though we rely on Plaintiff's admissions to insist on the dismissal of all of his claims, that reliance does not constitute an admission by Mutual of any discrimination or wrongdoing.

1988 as acknowledged in his letter to Mr. Lee Glenn of January 1990 and his letter to Mr. Robert Kramer of May 15, 1990.

Considering the factual uncontroverted record set forth herein, to allow the plaintiff to argue at this stage that he did not have unequivocal notice of termination until he received Mr. Kramer's letter of May 17, 1990, constitutes an erroneous interpretation of the facts and an incorrect conclusion of law in light of plaintiff's own admissions, the applicable statute of limitations, and the doctrines of estoppel and abuse of rights. To allow such an application of the law to the facts would permit potential claimants to hold in abeyance the impact, notice, and effect of the alleged discrimination until the moment in which they might feel ready to select an option, like in this case, disability, retirement, or probation, or to litigate. With respect to the doctrine of estoppel by own acts and the application of that doctrine in Puerto Rico see *Samuel Marxuach v. Díaz de Yañez*, 103 D.P.R. 533 (1975) and *González Rodríguez v. Fumero*, 38 D.P.R. 556 (1928) and with respect to the doctrine of abuse of rights and the application of that doctrine in Puerto Rico see *Torres v. García*, 119 D.P.R. 698 (1987); *Acosta & Rodas v. PRAICO*, 112 D.P.R. 583 (1982) and *Berríos v. International General Electric*, 88 D.P.R. 109 (163).

The record set forth herein clearly shows that at the latest, by February 9, 1989, Mr. Iglesias had an unequivocal notice of termination. The notice is clear and unambiguous, and immediately thereafter, Mr. Iglesias could have exercised his right to sue. The date is readily identifiable, constituting a clear warning to him of the termination of the relationship either as part of an agreement

with Mutual to take early retirement or as part of a dismissal from his position. Thus, the arguments set forth under *Vélez-Rodríguez* are not applicable to this case inasmuch as *Vélez-Rodríguez* just restates the state of the law in Puerto Rico, the same state of the law relied on by the Court to dismiss the discrimination claim of the instant Complaint and accordingly, Iglesias' discrimination claims are all time barred. He had unequivocal notice of the cancellation of the DI Product in Puerto Rico as early as in 1981, and of the termination of his employment at the latest as of February of 1989.

VII. CONCLUSION

A timeliness defense may be ruled upon by way of summary judgment provided that the relevant facts are not in controversy. It is evident that the Petitioner had plenty of unequivocal and undisputed knowledge of Respondent's alleged discriminatory acts, remaining inert for more than the 300 days set forth by Title VII and for more than the year set forth by Puerto Rico's laws. Accordingly, his causes of action were time barred and the Certiorari's Petition should be denied.

In San Juan, Puerto Rico, this 11th day of June, 1999.

Respectfully submitted,

ROBERTO O. MALDONADO NIEVES
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Corner of Franklin D. Roosevelt Ave.
San Juan, Puerto Rico 00921
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Counsel of Record for Respondent

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* * *

[p. 16] THE COURT: Ladies and gentlemen, before we present the first witness in this case, I'm going to read to you some stipulated facts. Stipulated facts are facts that are agreed to by the parties. So you don't have to make any determination, you don't have to deliberate over these facts. You just accept them as a fact. All right. Fact number one: Manuel Iglesias is of legal age, Puerto Rican, single and is a resident of Carolina, Puerto Rico. Two: The Mutual Life Insurance Company of New York is a Mutual Insurance Company organized pursuant to the laws of the State of New York and duly authorized by the Puerto Rico Insurance Commissioner to engage in the business of selling insurance products in Puerto Rico. Three: Manuel Iglesias was contracted as a field underwriter, also known as field representative, insurance salesman and/or sales agent. And was hired as a sales manager by Mutual of New York in 1976. Four: Manuel Iglesias was hired to work as agency manager of Mutual of New York in Puerto Rico for the San Juan agency in 1981. Five: During the period of time from 1981 until 1988, Mutual did not offer for sale in Puerto Rico its disability insurance products. Six: While Manuel Iglesias worked for Mutual he was allowed to sell disability insurance products from other companies. Seven: From 1981 until 1988, Mutual of New York did not offer its individual non cancelable disability insurance product for sale in [p. 17] Puerto Rico. Eight: The immediate supervisors of Mr. Manuel Iglesias were the following vice presidents of Mutual of New York while he worked as agency manager. Mr. Jerry Court, Cal Dorch, Mr. James Dewier, Mr. Walter Bancroft, Mr. Robert Kramer. And

that's it. Nine: The sales record – I'm sorry. Are we going to stipulate the sales records?

MR. MALDONADO: Yes.

THE COURT: The sales record of the Puerto Rico agency of Mutual of New York during Manuel Iglesias' tenure as its agency manager was the following. Now, this is the sales record. 1981: Four hundred and sixty-four thousand four hundred dollars, 1982: Four hundred and three thousand dollars, 1983: Five hundred and thirty-eight thousand eight hundred dollars, 1984: Three hundred and sixty-six thousand four hundred dollars. 1985: Three hundred and fifty-five thousand six hundred dollars, 1986: Three hundred and sixty-five thousand five hundred dollars, 1987: Six hundred and sixteen thousand six hundred dollars, and 1988: Three hundred and ninety-nine thousand nine hundred dollars.

The rate of compensation for each of the fiscal years March 1st through February 28th of each year during which Manuel Iglesias was agency manager of Mutual's San Juan agency was as follows. This was the rate of compensation. The same years that I read to you before. 1981: One hundred ninety thousand dollars, 1982: One [p. 18] hundred ninety thousand seven hundred and eighty-five, 1983: One hundred fifteen thousand three hundred and thirty-one dollars, 1984: One hundred and fifty-nine thousand three hundred and fifty-six dollars, 1985: One hundred two thousand three hundred and forty-seven dollars, 1986: Ninety-one thousand seven hundred and sixty dollars, 1987: Eighty-three thousand one hundred and fourteen dollars and six cents, 1988: One hundred forty-six thousand four hundred and sixty-seven dollars

and ninety-three cents. Stipulation number twelve; Mr. Robert Kramer was the regional vice president of Mutual of New York who supervised Manuel Iglesias in 1988.

Those are facts that you can take as a given. Mr. Maldonado.

MR. MALDONADO: Your Honor, before we start since we might be making use of the numbers pertaining to the production of the San Juan agency during the 1980's, I was wondering if we could make use of the board and write the numbers down just so that it's easier for reference.

THE COURT: Well, at the time that you are bringing it up, not now.

MR. MALDONADO: Okay. But I'm – my first witness will be Mr. Manuel Iglesias, your Honor.

(The witness is duly sworn.)

MR. MALDONADO: Your Honor, since he's an

* * *

* * *

[p. 309] ment or leave" . . .

A. No.

Q. . . . or was the first one to do that Kramer?

A. Kramer.

Q. OK, Kramer was the first one to do that?

A. Yes.

Q. And would it be correct for me to conclude according to all of the things that we have discussed today and on September 13, that at that point in October of 1988, MONY was actually confronting you with those two alternatives and from MONY's standpoint the three claims that you're making in the Complaint were behind MONY's decision, that is, to get rid of you because of your age, because of your national origin and what they had done to you throughout the years and also because they didn't have any good reason for you to leave the company? Everything was pretty much merging in October of 1988?

A. Yes. With the exception of the discrimination, it did not hit me that time. It hit me back in 1981 and every single year after that.

Q. Oh, but that's with regards to the refusal of the company to sell non-cancelable disability insurance?

A. But it was said, like you just said, on discrimination. Now, on age, yes, in October of '88. The other one? In October of '88. The discrimination, back to 1981 . . .

Q. But remember, we're talking about two different things.

* * *

MANUEL A. IGLESIAS
Condominio Los Pinos West
Apartamento 9 G
Isla Verde, P.R. 00913
(809) 791-4456

May 15, 1990

Mr. Robert N. Kramer
Regional Vice-President
Mutual of New York
Fourteen Piedmont Center
Suite 1215
Atlanta, Georgia 30305

Dear Mr. Kramer:

I would like to inform you that according to Mr. George Barta, Claims Director for MONY I am no longer disabled under MONY'S L.T.D. benefit plan. Therefore I am informing you that I want to return to my position as Manager of the San Juan Puerto Rico Agency. I am willing to start effective June 1, 1990.

As you recall, in the latter part of 1988 you told me to retire or I would have to be terminated as Agency Manager. I requested a retirement quotation and was contemplating retirement, until my cervical column problems forced me to make a disability claim and postpone my decision in regard to your petition to retire or be terminated.

Now I have been taken off disability and would like to go back to work. As you know I had an illustrious career as a Sales Manager with MONY and a good track record as a Manager of the San Juan MONY Agency. That track record would have been even better if it had not

been for MONY'S decision to withdraw the disability income products from the Puerto Rico market, as exemplified by the attitudes of then-Vice President Chrome Dollase.

I am now looking forward to helping make the San Juan Agency grow into one of the top ten agencies at MONY.

I trust you will be in agreement with me, and I am looking forward to your immediate reply.

Sincerely,

/s/ Manuel A. Iglesias
MANUEL A. IGLESIAS

* * *

[p. 59] A. Yes.

Q. OK. So, in 1981 you were appointed Agency Manager, right?

A. Yes.

Q. OK. And you were Agency Manager until when?

A. Until I became disabled.

Q. Late '88, early '89?

A. Late '88.

Q. What kind of disability was this?

A. It was a problem I've had with my back for the last over ten years, though I was never disabled away from work.

Q. Is this like a congenital problem or as part of an accident or a fall or what kind of a condition is this, if I may know?

A. I think it's a condition that has to do with my cervical column and my doctor calls it myositis, m-y-o-s-i-o-t-i-s, and it has to do with my cervical column having large deposits of bone, pinching my nerves.

Q. But my . . . , again my question is, whether this condition came up as a result of an accident or is it . . . , is it a congenital condition or just a disease that you got at some point?

A. It's not . . . , no accident and not congenital, it's something that I guess happens to a lot of people, they get large deposits of calcium in the bones.

Q. So it's just a medical condition that happens to people?

* * *

Robert H. Kramer
Regional Vice
President
201 907-6477

The Mutual Life Insurance Company of New York
Glenpointe Centre West
Teaneck, New Jersey 07666-6888

(LOGO) December 28, 1988

PERSONAL & CONFIDENTIAL

Mr. Manuel A. Iglesias
Manager
San Juan Agency #194

RE: Early Retirement

Dear Manny:

This is to confirm our agreement about your early retirement date and vacation pay.

Your last day at work will be February 1, 1989 with an early retirement date of March 1, 1989. We will pay you 44 days of unused vacation. We will process the above, but you should work with the Benefits area to process the necessary retirement benefits.

In addition to the above, we will pay you a transition allowance of $23,000 to be paid out as shown below. I have also included what I feel are reasonable production benchmarks for the allowance to continue.

	Paid Production*	Allowance**
March 1989	---	$ 2,000
April 1989	$ 1,000	2,000
May 1989	2,500	2,000
June 1989	4,500	2,000
July 1989	6,500	2,000
August 1989	9,000	2,000
September 1989	11,500	2,000
October 1989	14,000	2,000
November 1989	16,500	2,000
December 1989	19,000	2,000
January 1990	22,000	2,000
February 1990	25,200	1,000
		$23,000

*Paid production is cumulative from March 1, 1989 – February 28, 1990.

**Allowance will be paid in the middle of each month assuming the previous month's production benchmark is met.

The payment of this allowance is contingent upon you maintaining a career contract with MONY, and not working with any other companies. "Working" is defined as selling another company's products, helping or assisting in the sale of another company's products, or recruiting for another company. Also, we expect that you conduct yourself in a "good faith" manner towards MONY while you're receiving this allowance.

You may work out any housing arrangement you like with Bob Bonham. Any expense reimbursement program or fee for any sales management duties will be worked out with the new manager.

Good luck in your new adventure. Please sign below and return a copy of this to me to acknowledge receipt.

Take care,

RHK:cp
cc: R. Fete

_____ _____

Manuel A. Iglesias Date

Robert H. Kramer
Regional Vice
President
404 252-9112/9178

The Mutual Life Insurance Company of New York
Suite 1215, Fourteen Piedmont
Atlanta, Georgia 30305

February 9, 1989

PERSONAL AND CONFIDENTIAL

Mr. Manuel A. Iglesias
MONY Financial Services
San Juan Agency

Dear Manny:

This is to confirm our conversation that we had on February 8th.

Since you are totally disabled, it is not appropriate for you to have office space in the agency. Any deal that you work out with Bob Bonham is between Bob and you.

Also, you should file your early retirement papers so that as soon as you come off disability you will go straight into early retirement.

We will discuss your role as a Field Underwriter and any expense or transition allowance when your medical problem is resolved. At this point, you should concentrate on getting well.

Also, as we discussed, you will no longer be authorized to sign-off or act as Manager. Gloria, Enid, and I will

resolve the signature authorities, etc., for the transition period until a new manager is appointed.

Take care,

/s/ Bob

RK:ss

cc: Robert Fete, MD 75-24
David Francis, MD 76-4
Michael Kaplan, MD 75-8

* * *

[p. 95] purposes as Exhibit Number 5 to the deposition.)

MR. MALDONADO: Exhibit 6 would be Igelsias' letter of May 15, 1990, copy of which I also refer to Iglesias' attorney. That's Exhibit 6?

REPORTER: Yes, sir.

(Whereupon, the document mentioned was marked for identification purposes as Exhibit Number 6 to the deposition.)

MR. MALDONADO: And Exhibit 7 will be the letter of May 17, 1990 of Bob Kramer to Manuel Iglesias. I refer also a copy for Attorney Hey.

(Whereupon, the document mentioned was marked for identification purposes as Exhibit Number 7 to the deposition.)

MR. MALDONADO: OK? A few questions then, Mr. Iglesias, to close today's proceeding.

BY MR. MALDONADO:

Q. First of all, you've seen all the exhibits I've made reference to, right? You acknowledge that they're authentic . . . , authentic copies and that you've seen them before?

A. Yes.

Q. And that they were exchanged between the company and you as part of the normal course of the business?

A. Yes.

Q. OK. Next question, in addition to the communications that we have made reference to in this deposition, between Kramer and you, with respect to early retirement or termination, in the [p. 96] documents that we've made reference to here, that form part of the transcript, do you recall or do you have any other documents regarding that subject matter exchanged between you and the company between October of 1988 and May of 1990?

A. No.

Q. Do you recall any other communications, verbal communications, between Robert Kramer and you or any other officials of the company that were not your agents, between 1988, October 1988 and May 1990 regarding this subject matter?

A. No.

Q. OK. Has your field underwriter's contract with Mutual of New York been terminated?

A. I don't know.

Q. You have no recollection?

A. No.

Q. Is there a possibility that that contract might still be in existence?

A. I guess so, but I have no idea.

Q. OK, and you still have the license with PPS?

A. Yes.

Q. OK. And between October of 1988 and May of 1990, the company never changed its mind with regards

to terminating you or forcing you to take early retirement?

MR. HEY-MAESTRE: We have . . . , I have an objection to the way that question is phrased. You're asking whether he has knowledge

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

MANUEL A. IGLESIAS, Plaintiff, v. MUTUAL LIFE INSURANCE COMPANY OF NEW YORK (MONY), Defendant.	*	CIVIL NO. 91-1496 (CC) JURY TRIAL DEMANDED

AMENDED COMPLAINT

(Filed Sep. 4, 1991)

TO THE HONORABLE COURT:

COMES NOW THE PLAINTIFF, and through his undersigned legal counsel respectfully states, alleges and requests as follows:

INTRODUCTION

This is a civil action for declaratory relief, equitable relief and monetary damages by a former employee and field underwriter of defendant Mutual Life Insurance Company of New York ("MONY"). Plaintiff brings this action to remedy the deprivation of rights secured to him under the laws of Puerto Rico. Plaintiff alleges that he has been the victim of discrimination based on race and national origin because he is Puerto Rican, of unlawful employment practices and of an unlawful dismissal while employed by MONY, practices prohibited under the laws and Constitution of the Commonwealth of Puerto Rico.

Defendant MONY's unlawful and illegal employment practices culminated in the constructive dismissal of the Plaintiff on May 17, 1990. Plaintiff requests of this Honorable court compensation for his sufferings and for lost income, as well as for a preliminary and permanent injunction against the practices complained of herein, and for declaratory relief.

Plaintiff invokes the protection of Title VII of the Civil Rights Act of 1964, 42 U.S.C. secs. 2000e, et seq., for the employment discrimination and discharge to which he was subjected by the defendant because of his race, color and/or national origin (Puerto Rican).

Plaintiff further alleges that his federal constitutional rights to make and enter into contracts, guaranteed by the Civil Rights Act, 42 U.S.C. sec. 1981 has been unlawfully violated by defendant MONY, and that his contract as a field underwriter was breached by the defendant, for which MONY is liable to him under the Civil Code of Puerto Rico. He requests other and further relief for these claims and the resulting damages he has suffered.

Plaintiff also alleges that he was unlawfully and illegally discriminated against by MONY on account of his age – 57 years old – when he was terminated and replaced with another person approximately 15 years younger, in violation of the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. sec. 621 et seq.

Finally, Plaintiff contends that he was unjustly dismissed from his employment with MONY, in violation of Law 80 of May 30, 1976, of the commonwealth of Puerto Rico, for which he requests the severance pay ("mesada") due him under said law.

JURISDICTION

1. The jurisdiction of this Court, based on diversity of citizenship and arising under the laws of the United States, is invoked pursuant to 28 U.S.C. 1332, 2201, 2202 and 1331.

2. Plaintiff MANUEL A. IGLESIAS is, and was at all times relevant to this action, domiciled in and a citizen of the Commonwealth of Puerto Rico.

3. Defendant MUTUAL LIFE INSURANCE COMPANY OF NEW YORK (hereinafter "MONY") is, and was at all times relevant to this action, a corporation duly organized and existing under the laws of the State of New York or another state outside the Commonwealth of Puerto Rico, with its principal place of business in New York, New York.

4. This action involves a sum in excess of fifty thousand dollars ($50,000.00), exclusive of interests and costs. Every issue of law and fact herein is wholly between citizens of different states.

5. This is the proper venue to bring this action because the facts relating to this cause of action arose in this District.

PARTIES

6. Plaintiff MANUEL A. IGLESIAS is an adult resident of Carolina, Puerto Rico. He is a United States citizen born and raised in Puerto Rico of Puerto Rican parents. He was employed by MONY in Puerto Rico from 1976 until 1990.

7. Defendant MONY is a corporation with its headquarters and principal place of business in the State of New York. It is incorporated under the laws of that state or another state outside of the Commonwealth of Puerto Rico. It is an industry affecting interstate commerce and employing more than fifteen persons. It operates a division of its business – the San Juan Agency – in the Commonwealth of Puerto Rico. MONY is dedicated to the sale of life, health and disability insurance, pension plans, financial services as a brokered dealer in the New York Stock Exchange, real estate investments, and to providing other types of financial services. (It may be referred to herein as "the Company".)

FIRST CAUSE OF ACTION

8. In 1976, and after being recruited by representatives of defendant MONY in Puerto Rico, Manuel A. Iglesias began to work with MONY as Sales Manager for Puerto Rico.

9. In doing so Mr. Iglesias became an employee of MONY with his salary based on a percentage of sales generated. Furthermore, he began to receive a number of fringe benefits including but not limited to, life and disability insurance, a health and hospitalization plan and a pension plan.

10. At that time Mr. Iglesias also became a MONY sales agent, by means of a contractual agreement with the Company.

11. The primary reason plaintiff joined MONY, instead of competitors which had extended him offers,

was because that company offered the full range of products.

12. Among the products being sold in Puerto Rico as of June 1976 when plaintiff became Sales Manager for the San Juan Agency was MONY's non-cancelable disability insurance product.

13. Between 1976 and 1980 however, plaintiff, and the agents he recruited and supervised, sold as one of their regular products, a low-cost disability insurance product of a nonprofit association. This was a conscious business decision taken by the plaintiff with MONY's full knowledge and approval.

14. During this period (1976-1980), MONY's non-cancelable disability insurance product was available for sale in Puerto Rico and a number of said policies were sold.

15. Subsequently, and after a highly successful performance as Sales Manager, Manuel A. Iglesias was promoted to Agency Manager for Puerto Rico (the "San Juan Agency") beginning in 1981, with a guaranteed starting annual salary of over $190,000.00 (one hundred ninety thousand dollars).

16. Mr. Iglesias thereby became the first Puerto Rican Agency Manager in the MONY San Juan Agency's history.

17. After Mr. Iglesias became agency manager, marketing, costs and other sound business considerations lead him to return to reliance on MONY's non-cancelable disability insurance product as the primary complement to the other MONY products available, instead of the

non-profit product marketed during the preceding few years.

18. This important business decision by plaintiff as head of the San Juan Agency was effectively vetoed and undermined in 1982 by MONY, through its Senior Officers, who unilaterally and inexplicably decided to discontinue sales of the MONY non-cancelable disability insurance product in Puerto Rico.

19. Upon information and belief, Puerto Rico thereby became the only U.S. – flag market in which MONY has ceased selling its non-cancelable disability insurance product, including the continental U.S., the District of Columbia, the U.S. Virgin Islands, and other U.S. territories.

20. The decision taken by MONY was highly detrimental to plaintiff and his agency, as it was the direct cause of a precipitous drop in total sales, an increase in agent departures and an all-around negative effect of San Juan Agency staff morale, which severely effected plaintiff's earnings, physical and emotional health and standing among his peers in the insurance business community.

21. This decision constituted unlawful discrimination by MONY against plaintiff, his agency and his clientele based on his race, color and/or national origin as a Puerto Rican.

22. This decision had the unlawful and economically detrimental effect of eliminating an entire market and its related sales income from the plaintiff's reach,

based solely and/or primarily on reasons of race, color and/or national origin (Puerto Rican).

23. The decision taken by MONY was not based on legitimate business reasons nor bona fide commercial considerations. Rather, it was motivated by unlawful, subjective considerations of a racist, bigoted and discriminatory nature against Puerto Ricans in general.

24. Specifically, MONY'S refusal to make its non-cancelable disability product available to plaintiff for sale in Puerto Rico was motivated, among other reasons, by:

a. prejudice against the Puerto Rico legal system and alleged fear of unfair treatment of the company by these Courts, and by Puerto Rican judges in particular, in cases of claims because it is a United States firm;

b. discriminatory attitudes toward Puerto Rican doctors;

c. bigoted and irrational appreciation of the treatment MONY would receive from pertinent Puerto Rican government agencies;

d. irrational and grossly exaggerated fears about the alleged costs and detrimental effects of the use of the Spanish language in the issuance of policies and adjudication of claims.

25. The denial of this important product by defendant to plaintiff was a result of an unlawful, bigoted and discriminatory animus by MONY and its high-ranking decision-making senior staff toward Manuel A. Iglesias, his staff, agents, clientele and potential clientele based on their race, color or national origin as Puerto Ricans.

26. The unavailability of MONY's non-cancelable disability product to the San Juan Agency caused a sharp reduction in sales and commissions, with the resulting loss of field underwriters who left the agency in large numbers for competitor insurance companies, and causing plaintiff a severe drop in earnings, loss of potential future income, embarrassment within his agency and the general insurance business community, as well as adverse health effects.

27. The denial of the product thus resulted in morale problems, internal friction between plaintiff and his field underwriters (agents), waste of resources in the training of agents who were soon lost to rapid agent turnovers, increased stress for plaintiff in his dealings within his agency and with MONY's upper management, and to a substantial loss of income for plaintiff whose salary was largely dependent on the San Juan Agency's volume of sales.

28. The unlawful race and national origin-based discrimination to which plaintiff and his agency were subjected caused plaintiff profound frustration, humiliation embarrassment, mental anguish and emotional suffering as he repeatedly attempted, in vain over a six (6) year period, to obtain the vital product unlawfully withdrawn and denied to his agency.

29. Despite plaintiffs best efforts to prevent or otherwise minimize the noxious effects of MONY's discrimination, the San Juan Agency was crippled by this unlawful decision and suffered economically.

30. The resulting reduction in sales, turnover of agents, morale problems and other problems foisted upon

the agency by MONY's discriminatory policy were eventually used by MONY as the pretext to constructively terminate plaintiff against his will in May, 1990, by means of an involuntary "early retirement".

31. Defendant MONY's actions against plaintiff in denying him the necessary products to allow the San Juan Agency to compete in the Puerto Rico market were done in bad faith, in absence of rational or justifiable business reasons and/or were motivated by false, bigoted, racially prejudiced and unlawful discrimination against Puerto Ricans.

32. The actions, omissions, practices and policies by defendant MONY against Manuel A. Iglesias constitute, from their inception, a continuing pattern of illegal race and national origin discrimination against plaintiff in violation of Law 100 of Puerto Rico and of plaintiff's right to dignity and to be free from race and national origin discrimination under the Constitution of the Commonwealth of Puerto Rico.

SECOND CAUSE OF ACTION

32. Plaintiff repeats and re-alleges all of the facts, assertions and information contained in paragraphs 1 through 32, inclusive.

33. The aforementioned policies, practices, acts and omissions of defendant MONY violated the rights of plaintiff Manuel Iglesias to be free from discrimination based on race, color and/or national origin, as guaranteed by Title VII of the Civil Rights Act of 1964, 42 U.S.C. secs. 2000e et seq.

34. The plaintiff has complied with the administrative remedies provided by Title VII, by filing charge No. 16H-90-0247 and has requested and received a "Notice of Right to Sue", a copy of which is accompanied herewith as "Attachment A".

THIRD CAUSE OF ACTION

35. The plaintiff repeats and re-alleges all of the allegations, facts and information contained in paragraphs 1 through 34, inclusive.

36. In 1979, and in addition to his status as an employee of MONY, Manuel A. Iglesias entered into a "Lifetime Plan Contract" with defendant MONY.

37. Under the terms of said contract, Mr. Iglesias was appointed a "full-time MONY field Underwriter", authorized, *inter alia*, to solicit applications for insurance with MONY for all the types of insurance the defendant company issues.

38. That contract remained in effect until 1987, when it was replaced and superseded by the "Career Contract" signed between plaintiff and defendant.

39. The relevant terms and conditions of the Career Contract are substantially the same as the earlier contract in terms of appointment as field underwriter and authorization to solicit application for MONY insurance policies.

40. Both contracts specifically mentioned that compensation was to be paid plaintiff for business produced by him from all the different products produced and being issued by the defendant company.

41. These contracts existed in addition to the employment contracts in effect between the plaintiff and the defendant from 1976 through 1990.

42. The Career Contract was in effect until May, 1990, when it, too, was unilaterally breached and terminated by the defendant company.

43. Between 1976 and 1990, plaintiff acted as a field underwriter for defendant MONY, directly soliciting insurance applications, collecting premiums thereon and servicing his insured clients.

44. Because of defendant's illegal, unjustified, and discriminatory policy and practice of refusing to issue non-cancelable disability insurance in Puerto Rico as described above, plaintiff's clearly secured rights "to make and enforce contracts, . . . as is enjoyed by white citizens" were breached, in violation of 42 U.S.C. § 1981.

45. Defendants' discriminatory actions, inaction, policies and practices against plaintiff and his clientele because of his race, and national origin has been the direct cause of plaintiff's continuing and substantial loss of income (past, actual and future), embarrassment, humiliation, mental anguish and emotional suffering.

FOURTH CAUSE OF ACTION

46. Plaintiff repeats and re-alleges the facts, assertions, information and claims continued in paragraphs 1 through 45, inclusive.

47. Defendant's denial of the non-cancelable disability insurance product for sale by plaintiff constitutes a breach of contract in violation of the applicable laws

codified in the Civil Code of Puerto Rico, and has been the direct and immediate cause of lost actual and future income, and of mental and emotional damages, since it first occurred in 1982.

FIFTH CAUSE OF ACTION

48. Plaintiff repeats and re-alleges the facts, assertions, information and claims continued in paragraphs 1 through 47, inclusive.

49. When the company forced Mr. Iglesias into an involuntary "early retirement" at age 57, he was a member of the class of persons protected by the A.D.E.A., 29 U.S.C., sec 621, et seq., was constructively discharged, was replaced by a much younger person, and this was done despite the fact that plaintiff was and remains qualified to do the job he was discharged from.

50. Mr. Iglesias' age was a factor which contributed to and/or was a significant factor taken into consideration by the defendant in its decision to force him into "early retirement".

51. Defendant MONY's constructive dismissal of plaintiff Manuel Iglesias constitutes discrimination against plaintiff because of his age, in violation of the A.D.E.A.

SIXTH CAUSE OF ACTION

52. Plaintiff repeats and re-alleges each and every fact, allegation and assertion contained in paragraphs 1 through 51, inclusive.

53. Defendant's action against plaintiff, forcing him into early retirement, was wholly unjustified in fact and in law.

54. Defendant's actions constituted an unjust dismissal of plaintiff from his employment, in violation of Law 80 of May 30, 1976 of the Commonwealth of Puerto Rico.

RELIEF

WHEREFORE, plaintiff respectfully request that this Court:

1. Enter a Declaratory Judgment that the actions, omissions, policies and practices complained of herein are in violation of the Constitution and laws of the Commonwealth of Puerto Rico and of the United States.

2. Issue a preliminary and permanent injunction:

   a. enjoining defendant and its agents, successors, employees, attorneys and representatives from engaging in the discriminatory policies and practices based on race or national origin against plaintiff complained of herein;

   b. ordering the reinstatement of plaintiff as San Juan Agency manager with full back pay, including any fringe benefits, incentives or any further compensation to which plaintiff would have been entitled if he had not been constructively dismissed.

3. Award the plaintiff compensation for loss of income caused by defendant's unlawful employment

actions in an amount no less than $7,000,000.00 (seven million dollars).

4. Award the plaintiff compensation for loss of income caused by defendant's unconstitutional an [sic] and illegal contractual violations in an amount no less than $250,000.00 (two hundred and fifty thousand dollars).

5. Award the plaintiff actual damages caused as a result of defendant's illegal acts in an amount of no less than $500,000.00 (five hundred thousand dollars).

6. Award the plaintiff punitive damages in an amount of no less than $500,000.00 (five hundred thousand dollars).

7. Award the plaintiff the severance pay ("mesada") due him in accordance with Law 80, in an amount no less than $51,500.00 (fifty-one thousand, five hundred dollars).

8. Retain jurisdiction over this action in order to assure full compliance with the decree in the event that the Court finds that the acts complained of herein were illegal and/or unconstitutional.

9. Award the Plaintiff the costs of this action, together with reasonable attorney's fees as provided for in the 42 U.S.C. sec. 1988 of the Civil Rights statutes and in the A.D.E.A.

10. Grant Plaintiff such other and further relief as the Court may deem appropriate and proper.

In San Juan, Puerto Rico, this 3rd day of September, 1991.

/s/ Charles S. Hey-Maestre
CHARLES S. HEY-MAESTRE
USDC-PR NO. 201906
Calle Las Marias 206-A
Urb. Hyde Park
Rio Piedras, PR 00927
Tel. 250-0589
Fax. 250-0986

/s/ Roberto Roldan-Burgos
ROBERTO ROLDAN-BURGOS
USDC-PR NO. 202506
Calle Las Marias 206
Urb. Hyde Park
Rio Piedras, PR 00927
Tels.: 758-8525
758-8440

The Mutual Life Insurance Company of New York
Suite 1215, Fourteen Piedmont Center
Atlanta, Georgia 30305

Robert H. Kramer
Regional Vice President
404 262-9112/9178

May 17, 1990

Mr. Manuel A. Iglesias
Condominio Los Pinos West
Apartamento 9G
Isla Verde, P.R. 00913

Dear Manny:

Since you had agreed to take early retirement prior to your disability, I have asked our Home Office representatives to work with you in processing your papers.

Respectfully,

/s/ Bob

PPS **Physicians Planning Service Corp.**

Cond. Los Pinos West, apt. 9G, Isla Verde, P.R. 00913 (809) 791-4456

[Offices of Independent Licensees and Names Omitted in Printing]

Mr. Lee Glenn:
Physician Planning Serv. corp.
292 Madison Avenue
New York, N.Y. 100

Dear Lee:

It was great talking to you over the telephone, and I like to take this opportunity to wish you great success at P.P.S.

To bring you up to date and to confirm our telephone conversation, here are my plans for 1990. First, I should come off dissability in Febrary or March. At that time I should be working as a Sales Manager for either New England Life, Metropolitan Life, or Mutual Benefit Life. During 1990 I shall recruit 7 or 8 agents on a carreer basis, all of whom will be working with P.P.S. As in the past all my agents will have a quota with the insurance company, and a minimum quota with P.P.S. Quota for P.P.S. will be between 4 or 6 new members per month and sales of 2 to 4 policies of P.P.S., with the new six months free membership just announced, these quotas will change.

As you know I have been associated with P.P.S. since 1967 as an agent and as a licensee since 1971. When Home Life left P.R. due to the fact that a new law came in, that made mandatory Spanish policies available to policyholders. I joined Mony as a Sales Manager, when Home Life left, and in 1978, 1979, 1980 I was the number one

Sales Manager in the company with a production of $392,000 in F.Y.C. At the same time and during the same period I was the number one Licensee with P.P.S., both in policies and commissions. In 1981 I was named agency manager for Mony's San Juan Agency. Due to the fact that P.P.s. D.I. policies both with Lumbermans and Centennial had ever increasing premiums, my agents started to sell non – can individual D.I. policies.

Then in 1982 Mony withdrew its D.I. policies from my agency. (This was for reassons that I shall explain at a later date to you on my visit to your office in the foreseeable future, and also part of my legal action against Mony within the next two months)

I was instrumental in getting P.P.S. together with Mony's group department resuting in the actual P.P.S. D.I. policies at the present.

I expect that as soon as I start working with one of the companies mentioned, I will be amongst the top 10 Licensees at P.P.S. in policies and commissions during year end 1990 and either in 1991 or 1992 I will become the number one Licensee in production.

Ever since I started in the Life Insurance business it has been as a member of the P.P.S. team and I can't see myself doing it any other way.

P.P.S. is the greatest life & Health Insurance prospecting tool in the world and I want to be the best in the P.P.S. organization.

I am grateful to Pat Arden, High Curley and all the P.P.S. executives for bearing with me during the disability period I have gone through. This wait shall not be in

vain, I will come through with more laurels and business than in the past, and with your help and my efforts we shall keep George Arden's dream alive and well in Puerto Rico.

I will keep you posted,

Sincerely,

/s/ Manuel A. Iglesias

* * *

[p. 209] A Yes.

Q In fact, the quota that year, the document reflects that the agency Mr. Langavin was the head of at that time, met a hundred eleven point one percent of its quota?

A Yes.

Q So it exceeded its quota that year?

A Yes, it did.

Q Do you know whether DI was available that year?

A Yes, it was.

MR. HEY: No further questions, your Honor.

THE COURT: You both finished? Forever hold your peace.

MR. HEY: Well, we are finished with this part.

THE COURT: I have just one or two questions, and that will be it. Mr. Iglesias, on December 28, 1988, you were sent a letter which was entitled early retirement. And it says, "This is to confirm our agreement about your early retirement date and vacation pay." And it says, "Your last day at work will be February 1, 1989." And then it proceeds to talk about giving you a transition allowance of some twenty-three thousand dollars. And in the last paragraph it says, "Good luck in your new adventure." On February 8, 1989, which was a letter to you from Bob of – who is Bob?

MR. MALDONADO: Mr. Kramer.

[p. 210] THE COURT: Oh, Mr. Kramer. Which says, among other things, "Also you should file your early retirement papers so that as soon as you come off disability you will go straight into early retirement." The last paragraph talks about, "Also as we discussed you will no longer be authorized to sign off or act as manager. Gloria, Enid and I will resolve the signature authorities, et cetera, for the transition period until a new manager is appointed." Now, you were given vacation pay, accumulated, accrued vacation pay?

THE WITNESS: Yes.

THE COURT: Of forty-four days. Now, when in the course of the business of Mutual of New York do people take accrued vacation pay? What is the general way that operates?

THE WITNESS: I don't know about Mutual of New York, but –

THE COURT: No. I'm talking about Mutual of New York. I'm talking about where you worked. When do you ordinarily take accumulated vacation pay?

THE WITNESS: If I didn't take the vacation I was entitled to be paid for them.

THE COURT: That's right.

A THE WITNESS: So I did not take vacation in three years. So I was entitled to forty-five days of [p. 211] vacation.

THE COURT: Would you have been entitled to cash in on accumulated vacation pay, let's say in February of 1988 or 1987?

THE WITNESS: Those vacation days were probably for those dates, those forty-four days.

THE COURT: They were accumulated in those days, but would you have been entitled or would you have been able to cash in on it at that time?

THE WITNESS: I don't know. Probably, but I don't known exactly.

THE COURT: If you had gone into the supervisor, whoever it was and said I have – let's say back in 1987, I have twenty-eight days of vacation pay accumulated. I want to cash it in. I want you to give me money for it.

THE WITNESS: Maybe I had that option, but I'm not sure. If I would say yes, I might be lying. I don't know. I would imagine so.

THE COURT: Whose idea was it to pay you out your accrued vacation pay?

THE WITNESS: What date are we talking about? I'm a little tired and confused, your Honor.

THE COURT: December 28, 1988, you were –

THE WITNESS: Okay. So I was actually [p. 212] exercising that right. I was saying pay me my vacation that I have accrued because I'm disabled. And I don't think I'm going to be taking a vacation, per se. So pay me that amount of money that is owed to me.

THE COURT: And you received this letter. It says, "This is to confirm our agreement about your early retirement date and vacation pay."

THE WITNESS: Okay. Well, I agreed about the –

THE COURT: Vacation pay?

THE WITNESS: But I did not agree with him to take early retirement.

THE COURT: Okay, you didn't agree with him. Now, that was dated December 28, 1988. And then two months later in February 8, 1989, I believe that's two months later, you got another letter which talked about, "Also you should file your early retirement papers so as soon as you come off disability you'll go straight into early retirement." So from February 8, 1989, until May 15, 1990, where you write them a letter saying, "Now that I've been taken off disability and would like to go back to work," fifteen months had passed?

A Yes.

Q Over a year? Fifteen months?

A Yes.

[p. 213] Q And all that time did you make any kind of a response to Mr. Kramer or anyone else in Mutual with respect to the fact that they were telling you that you were in early retirement and as a result of which it was combined with the receipt of accumulated vacation pay?

THE WITNESS: But I did not agree with them. And I think that early retirement is my decision. The

company doesn't say in their pension plan, you must take early retirement at fifty-eight or fifty-nine. They say you must retire at sixty-five. You may take early retirement after fifty-five. So that "may take" is up to me, not up to him.

THE COURT: That's right.

THE WITNESS: And he's saying we had an agreement, and I don't have an agreement with him.

THE COURT: Well, if you did not have an agreement with him, why didn't you tell him that?

THE WITNESS: I think I said that I had a grudge because –

THE COURT: Why did you accept the vacation pay?

THE WITNESS: I think I had a grudge with him like – I didn't write about the vacation pay to him either. I didn't write to him about the vacation pay either, but if I don't have an agreement he fires me or tries to fire me.

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

MANUEL IGLESIAS, Plaintiff, v. THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK, Defendant.	)	CIVIL NO. 91-1496 (RLA)

VERDICT FORM

WE, THE JURY FIND THAT:

(CHECK ONLY **ONE** OF THE FOLLOWING)

_ PLAINTIFF VOLUNTARILY RETIRED AS AGENCY MANAGER OF MUTUAL OF NEW YORK IN PUERTO RICO.

_ DEFENDANT DISMISSED OR OTHERWISE CAUSED PLAINTIFF'S INVOLUNTARY RETIREMENT FROM HIS EMPLOYMENT AS AGENCY MANAGER OF MUTUAL OF NEW YORK IN PUERTO RICO.

FOREPERSON _____ DATE _____

11 L.P.R.A. §1

§1. Abreviated Title

This Chapter will be named "Employment Accident Compensation Act" – Act 6, Act 45, April 18, 1935, effective July 1, 1935.

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11 L.P.R.A. §2

Workers and employees covered by this Chapter:

The provisions of this Chapter will be applicable to all employees and workers who work for the employers referred to in the following paragraph, who suffer injuries or become disabled, or who lose their life as a result of accidents related to any act or function inherent to his work or employment and that occur in its course, and as a result of it or illnesses or deaths derived from the occupation, as specified in the next section . . .

Article 2 of Act number 45, of April 18, 1935 as amended.

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§3. Rights of employees and workers:

All workers or employees who suffer injuries or occupational illnesses within the conditions set forth in

this Chapter as established in section 2 of this title shall have the right to:

1. Medical assistance . . .
2. Transition Disability . . .
3. Partial Permanent Disability . . .
4. Total Permanent Disability . . .
5. Compensation for Death . . .

Article 3 of Act Number 45 of April 18, 1935 as amended.

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§7. Reinstatement after Disability:

In the case of disability for employment pursuant to the provisions of this Chapter, the employers will be compelled to reserve the employment undertaken by the employee or worker when the accident occurred and to reinstate him subject to the following conditions:

(1) That the worker or employee requires the employer to reinstate him in the employment within 15 days from the date in which the workers or employee is discharged [from the medical treatment at the Workmen's Compensation Fund], and as long as such request is not done after twelve months from the date of the accident have lapsed. . . .

Article 5a of Act 45 of April 18, 1935, as amended.